

South Carolina Department of Health & Environmental Control  
Office of Environmental Quality Control  
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*An Overview of the Administrative Enforcement Process*

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**Introduction**

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This information sheet has been prepared to help you better understand the Department's enforcement process. It is the Department's underlying goal to use its regulatory authority to assist permit holders who find themselves in violation to return to full compliance, as well as to provide an incentive for staying in compliance. Enforcement is one tool to help ensure that obligations to safeguard the environment through strict adherence to regulations and environmental permit requirements, terms, and conditions are fulfilled.

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**What is a Notice of Alleged Violation/Notice of Enforcement Conference (NOAV/EC)?**

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The NOAV/EC is the first step in the administrative enforcement process. When it is discovered that an environmental law or regulation may have been violated, a NOV/EC may be issued. The notice outlines the Office of Environmental Quality Control's (EQC) findings, identifies the law, regulation, or permit requirement EQC believes was violated, and invites the responsible party (Respondent) to attend an enforcement conference. The Respondent may accept EQC's findings and elect not to attend a conference, in which case an order would be drafted, if appropriate, for the Respondent's review and final negotiations.

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**When is an enforcement action necessary?**

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There are different factors considered by EQC staff when deciding to initiate an enforcement action. Most fall within the following: 1) the specific type of violation identified may require EQC to take a formal enforcement action, 2) the violation is serious or a threat to public health or the environment, or 3) the alleged violation has not been corrected within a reasonable period of time.

**What is an enforcement conference?**

The enforcement conference is a voluntary, informal meeting between EQC staff and the Respondent. The NOAV/EC contains all of the known issues of regulatory concern and provides the basis for discussion. It is important for the Respondent to be fully prepared to present any information which will enable staff to make a fair and sound decision concerning the allegations. The Respondent is expected to report any corrective action(s) taken or planned.

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**Who is expected to attend the conference and who from EQC will be present?**

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People who are most familiar with the issues and who have decision-making authority on behalf of the Respondent are expected to attend. The Department will be represented by an enforcement project manager, district staff, technical support, and other compliance personnel involved with the matter. A staff attorney representing EQC is generally not in attendance.

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**What typically happens at the enforcement conference and what may result?**

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The Respondent can expect a fair evaluation of the circumstances surrounding the issue of concern. Staff will ask questions and determine a reasonable response based upon consideration of the facts. There are four possible outcomes to the conference: 1) it is determined that the event is not a violation and is dismissed; 2) the violation is properly alleged, but there is justification to resolve the matter without the issuance of an order; 3) the violation is properly alleged, and the Respondent is given the opportunity to settle the issue by entering into a consent order with the Department; or 4) there is disagreement on the violation and/or other issues, but the Department believes the matter must still be addressed and an administrative (unilateral) order is issued.

**What is a consent order and will it require a penalty payment?**

A consent order is a legally binding, enforceable document, the terms and conditions of which are agreed upon by the Respondent and the Department. The decision to assess a penalty depends upon the type of violation alleged and other factors. If a civil penalty is assessed, then the penalty amount is calculated in accordance with the Department's Uniform Enforcement Policy and established procedures. In signing a consent order, the Respondent waives his right to an administrative appeal, but the additional time and costs associated with an administrative hearing and other potential court-related costs are avoided.

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**What is the purpose of a civil penalty, how is the penalty amount determined, and who gets the money?**

Civil penalties have historically served as a means of punishment for the violation of federal or state environmental laws. In addition, civil penalties are intended to deter future noncompliance and eliminate any economic incentive for not complying. The amount of the civil penalty is designed to reflect the frequency, duration, and severity of the alleged violation(s). Some other factors that may be considered are the compliance histories, degree of negligence, and economic benefit gained through noncompliance. The money collected is dispersed as specified by state law, either sent to the State's General Fund, or a portion to the county in which the violation occurred. Only the State Recreational Waters Act allows a portion of the penalty collected to go to the Public Swimming Pool Program.

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**If violations are corrected, would a civil penalty still be assessed?**

To promote fairness and consistency within the administrative enforcement process, civil penalties are typically assessed against certain violations. However, if the respondent demonstrates good faith efforts to promptly correct the alleged violation, staff will favorably consider these actions when calculating any penalty. Other factors that may affect the penalty amount include measures taken to prevent recurrence and other mitigating factors.

**Why should the Respondent attempt to negotiate a settlement?**

There is often significant savings in time and money when the parties in an administrative action can reach an agreement to settle. If, however, an agreement to the terms, conditions and/or any civil penalty proposed in a consent order cannot be reached, the Department may issue an administrative order without the Respondent's consent. The order would include alleged findings of fact, conclusions of law, and contain specific requirements addressing the alleged violation(s). The civil penalty in an administrative order can also include, within statutory limits, the anticipated increased costs to the state to defend the Department's decision at trial.

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**If a settlement cannot be reached and an order is issued without consent, what are the Respondent's options?**

The Respondent will have thirty (30) days from receipt of the order to appeal the Department's decision. Contested cases are heard before an Administrative Law Judge (ALJ). The role of the ALJ is to be an objective, impartial third party to hear a contested case and to render a decision. If the Respondent fails to make an appeal, the administrative order is considered in effect and the Department will seek to enforce the order.

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**Is the decision of the ALJ final?**

The decision of the ALJ may be appealed to the Department's Board, which will vote to either uphold, reverse, or modify the decision of the ALJ. The Board's decision may be appealed to circuit court.



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